

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

2. In November 2003 the Department's fraud investigator conducted an investigation regarding the allegations. The petitioner denied to him that the individual in question was living with her. The investigator reported, however, that based on interviews he had had with other individuals he

considered it a "possibility" that the individual in question was living with the petitioner. He referred the case to the petitioner's Reach Up case manager for "follow up".

3. There is no evidence that any further action was taken by the Department regarding the petitioner's RUFA eligibility until May 2004, when a Department supervisor in the petitioner's district office received an "anonymous call" regarding the presence of the same individual living in the petitioner's household.

4. At a May 2004 meeting with another supervisor in that district the petitioner again denied that individual's presence in her household. In the days that followed this meeting, this supervisor drove by the petitioner's home after hours on two separate evenings and observed a car in the petitioner's driveway that she later determined was registered to the individual in question.

5. In June 2004 the Department notified the petitioner that her RUFA grant would close effective July 1, 2004 due to the presence of another parent in the household whose income and resources had not been reported.

6. At the hearing in this matter, held on September 14, 2004, the only admissible evidence presented by the Department regarding this individual's presence in the household was the

testimony of the supervisor who had observed this individual's car in the petitioner's driveway on two occasions in May 2004.<sup>1</sup>

ORDER

The Department's decision is reversed.

REASONS

Fair Hearing Rule No. 11 includes the provision: "The burden of proving facts alleged as the basis for agency decisions to terminate or reduce an assistance grant, or to revoke or fail to renew a license, shall be on the agency, unless otherwise provided by statute." Rule No. 12 provides:

Rules of evidence. The rules of evidence applied in civil cases by the courts of the State of Vermont shall be followed, except that the hearing officer may allow evidence not admissible thereunder where, in his or her judgement, application of the exclusionary rule would result in unnecessary hardship and the evidence offered is of a kind commonly relied upon by reasonably prudent persons in the conduct of their affairs.

In this case, the Department made no request or showing prior to the hearing either that it faced any "hardship" in

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<sup>1</sup> The Department's investigator testified as to the scope and findings of his investigation (see paragraph 2, *supra*), and a supervisor testified that he received the anonymous phone call (paragraph 3). The hearing officer admitted this testimony solely for the purpose of establishing the reasonableness of the Department's motives in "investigating" the matter further. However, in the absence of any other witness with any direct knowledge of the petitioner's situation, all hearsay evidence relating to

producing witnesses<sup>2</sup> or that any "reasonable person", much less a trier of fact, should rely solely on hearsay in such a proceeding. The Board has a longstanding policy of not admitting such evidence in this type of case (see Fair Hearing No. 6187) and the hearing officer can recall no case (at least in the last twenty years) in which the Department has ever argued otherwise.

Suffice it to conclude, therefore, that the mere fact that a car registered to the individual in question was seen in the petitioner's driveway on two occasions does not meet the Department's burden of *proving* that this individual was ever residing in the petitioner's household.

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the issue of the individual's presence in the petitioner's household was excluded (see *infra*).

<sup>2</sup> The Department has frequently availed itself of subpoenas under Rule 7. There is no allegation or indication it attempted to do so here.